IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 116 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MADHAVLAL RATANLAL KOSTI

Versus

MUNICIPAL COMMISSIONER

Appearance:

1. Appeal from Order No. 116 of 2003

MR NS SHETH for Petitioner No. 1

..... for Respondent No. 1-2

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 31/03/2003

ORAL JUDGEMENT

Ld. counsel Mr. Sheth for the appellant seeks permission to delete respondent no.2 as he is formal

party. Permission is granted. Respondent no.2 is deleted as party respondent no.2.

This court today has condoned the delay. At the request of ld. counsel appearing for the parties, this matter is taken up for hearing today.

Rule. Mr. Maulin R.Raval appears and waives service of Rule for the respondent Municipal Corporation. With the consent of ld. counsel appearing for the parties, the matter is taken up for final hearing today.

This is a case where Municipal Corporation's act to construct a public toilet in the neighbouring area or place of the appellant-plaintiff is challenged on various grounds. It is submitted by ld. counsel Mr.Sheth that the trial Court has erred in rejecting Interim Relief Application pending the hearing and final disposal of the suit.

I have considered the alleged dissatisfaction and grievance expressed by the appellant in the memo of the petition. On careful consideration of the impugned order passed by the ld. trial Court while dealing with application exh.5/6 dated 4.12.2000, it transpires that the ld. City Civil Judge has appreciated the facts in detail. Undisputedly, the Municipal Corporation has considered the toilets under the Scheme "Pay & Use" for the public at large and there is no apparent element of conflict of interest. Toilets have been erected on the land of the Corporation. People of the concerned area i.e. inhabitants of the area had requested the Corporation to erect the toilets as a public utility service under the scheme of "Pay & Use". Undisputedly, toilets have been constructed and they are being used by the people of that area.

According to ld. counsel Mr. Sheth, construction has been completed pending the suit and, therefore, at least it should be observed that said construction and use of the toilet would be subject to the final outcome of the suit.

The findings recorded by the ld. City Civil Judge are tentative and the same are subject to the scrutiny and reappreciation while dealing with all the issues. Ld. City Civil Judge shall decide the suit on merits and without being influenced by the findings recorded while dealing with notice of motion.

In short, there is no patent illegality or perversity in the order passed by the ld. City Civil Judge and hence there is no merits in this AO and the same is hereby dismissed. Rule is discharged. No costs.

31.3.2003 [C.K. BUCH, J]

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